Intermec Technologies Corp. v. Palm, Inc.

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EXHIBIT H

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(See Signature Page for Additional Plaintiffs' Counsel)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CLRB HANSON INDUSTRIES, LLC d/b/a INDUSTRIAL PRINTING, and HOWARD STERN, on behalf of themselves and all others similarly situated, Plaintiffs, v. GOOGLE, INC., Defendant.	Case No. C 05-03649 JW PVT Hon. James W. Ware **HOWARD STERN'S RESPONSES AND OBJECTIONS TO DEFENDANT GOOGLE INC.'S INTERROGATORIES (SET ONE)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Howard Stern ("Plaintiff"), by and through his attorneys, hereby responds to Defendant Google Inc.'s Interrogatories to Plaintiff Howard Stern (Set One) (the "Interrogatories") as follows:

GENERAL OBJECTIONS

Plaintiff generally objects to the Interrogatories on the following grounds, each of which is incorporated by reference in the responses to the individual Interrogatories below. All responses set forth herein are subject to and without waiver of any of these General Objections.

1. Plaintiff objects to these Interrogatories to the extent they seek the information that is protected by various privileges and protections, including the attorney-client privilege, the work product doctrine, and any other legally recognized privilege and/or protection. By responding to any Interrogatory, Plaintiff does not waive the attorney-client privilege, the work product doctrine, or any other applicable privilege as to that interrogatory or as to any other future interrogatory.

2. Plaintiff objects to these Interrogatories to the extent they seek answers beyond the scope permitted by the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of California (the "Local Rules").

3. Plaintiff objects to these Interrogatories to the extent that, when read with the definitions and instructions, they seek to impose discovery obligations on Plaintiff broader than, or inconsistent with, those set forth in the Federal Rules of Civil Procedure, the Local Rules, or other law.

4. Plaintiff objects to the Interrogatories to the extent that they impose upon Plaintiff a duty to seek out information which is not in his personal possession, custody or control.

5. Plaintiff objects to the Interrogatories to the extent that they seek financial non-relevant confidential information.

6. Plaintiff objects to the Interrogatories to the extent that they seek documents or information that has already been provided to defendant, is otherwise in defendant's possession, custody or control, or is otherwise publicly available.

7. Plaintiff objects to the Interrogatories on the grounds that much of the information demanded by these Interrogatories is already on record or has already been produced. It is burdensome and oppressive to require Plaintiff to duplicate effort to respond to these same questions.

8. Plaintiff objects to these Interrogatories to the extent they are vague, ambiguous, or incomprehensible and, therefore, require Plaintiff to engage in conjecture as to their meaning.

9. Plaintiff objects to these Interrogatories to the extent that the information sought by the defendant is contained in documents that are already in defendant's possession, custody, or control, or is equally available to defendant, on the grounds that such requests are unreasonably cumulative and duplicative, and that the information is obtainable from a source that is more convenient, less burdensome, and less expensive.

10. Plaintiff objects to these Interrogatories to the extent that they are not related to the time period and subject matter at issue in this litigation.

11. Plaintiff objects to these Interrogatories to the extent they are unduly burdensome, overbroad, or seek information that is not relevant to any of the claims or defenses of any of the parties.

12. Plaintiff objects to the Interrogatories to the extent they require Plaintiff to make legal conclusions or apply law to facts.

13. Plaintiff objects to these Interrogatories to the extent they fail to state with sufficient particularity the information and categories of information to be provided.

14. Plaintiff objects to these Interrogatories on the grounds that they do not provide a relevant time period.

15. Plaintiff objects to these Interrogatories to the extent they seek information more appropriate for expert testimony.

16. Plaintiff objects to the Interrogatories to the extent that they seek information relating to Plaintiff's contentions on the grounds that they are improper, premature, seek information that is beyond the scope of permissible discovery at this stage of the litigation, and ask Plaintiff to provide, under oath, information or contentions not within Plaintiff's personal knowledge. Additionally, contentions may be subject to change during the course of the litigation. Such contention interrogatories are therefore premature.

17. Plaintiff objects to Definition "YOU" and "YOUR" of the Interrogatories as overbroad, vague and ambiguous. Plaintiff will interpret the terms "YOU" and "YOUR" in compliance with the Federal Rules of Civil Procedure.

18. Plaintiff objects to Definition "CONTRACT" of the Interrogatories as overbroad, vague and ambiguous.

19. Plaintiff objects to Definition "RESELLER" as overbroad, vague and ambiguous.

20. Plaintiff's responses are based upon, and therefore limited by, records and information still in existence, presently recollected and thus far discovered in the course of preparing these responses. Consequently, Plaintiff reserves the right to revise or supplement these responses, only to the extent required by the Federal Rules of Civil Procedure, if it appears that, at any time, inadvertent errors or omissions have been made or additional or more accurate information becomes available.

21. The production of any information when the production of such information is objected to herein shall not constitute a waiver of any applicable objection and is without

prejudice to Plaintiff's right to object later that the production of any such information was inadvertent.

22. No incidental or implied admissions are intended in these responses. Plaintiff's response to all or any part of any Interrogatory should not be taken as an admission that: (a) Plaintiff accepts or admits the existence of any fact(s) set forth or assumed by the Interrogatory; or (b) Plaintiff's response constitutes admissible evidence. Plaintiff's response to all or any part of an Interrogatory also is not intended to be, and shall not be, a waiver by Plaintiff of all or any part of its objection(s) to that Interrogatory.

23. Plaintiff's response to these interrogatories shall not be construed as an admission of relevance, materiality, or admissibility of such information or the subject matter of such information, or as a waiver or abridgement of any applicable privilege or of any applicable objection set forth above or below. Plaintiff reserves the right to object to the admissibility in evidence of any part of the responses to the Interrogatories.

24. Plaintiff's General Objections are hereby incorporated in each and every response set forth below, regardless of whether such objections are repeated as to each individual definition or instruction to which they are applicable. By stating specific objections in response to a request, Plaintiff does not waive any of the objections incorporated herein.

INTERROGATORIES

By setting forth specific objections, Plaintiff does not intend to limit or restrict the General Objections. Plaintiff incorporates the General Objections into Plaintiff's responses to each of the Interrogatories.

INTERROGATORY NO. 1:

State all facts that support YOUR claim that YOU sustained damages or other injury as a result of any conduct and/or omission of GOOGLE.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google. It is burdensome and oppressive to require Plaintiff to state "all facts."

Subject to the general and specific objections, Plaintiff states that Google represented that Plaintiff could establish a daily budget for its AdWords campaigns. However, Google charged more than the daily budget that Plaintiff set for its AdWords campaigns.

INTERROGATORY NO. 2:

State the amount of monetary damages YOU claim that YOU sustained as a result of any conduct and/or omission of GOOGLE.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google. It is burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question.

Subject to the general and specific objections, Plaintiff states that the amount of monetary damages he sustained are the amounts that Google charged Plaintiff over his daily budget. Google's records contain Plaintiff's daily budget and the amount in excess of the daily budget Google charged him.

INTERROGATORY NO. 3:

Describe in detail how YOU calculated the amount of pecuniary damages YOU claim that YOU sustained as a result of any conduct and/or omission of GOOGLE.

RESPONSE:

See response to Interrogatory No. 2.

INTERROGATORY NO. 4:

Identify the date on which YOU first realized that GOOGLE was periodically charging YOU in excess of 100% of your AdWords daily budget on certain days.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague and ambiguous. Plaintiff also objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google.

Subject to the general and specific objections, Plaintiff's best recollection is that on October 21, 2003, Plaintiff observed for the first time that Google was periodically charging him more than the daily budget.

INTERROGATORY NO. 5:

Identify the date on which YOU first realized that it is GOOGLE's policy that, on any single day, the AdWords system may deliver up to 20% more ads than YOUR daily budget calls for to help to make up for other days in which your daily budget is not reached.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague and ambiguous. Plaintiff objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google.

Subject to the general and specific objections, Plaintiff responds as follows: On October 22, 2003, Google sent Plaintiff an email stating: "As traffic is never constant from day to day, it is possible that you may accrue charges above or below your set limit. In general, we try to keep your daily cost fluctuation to no more than 20% above your daily budget . . . ." However, in response to Mr. Stern's request that same day that the bill be "rework[ed] . . . to reflect a $10/day max, not some sort of average that approximates $10/day," Google stated: "We will make sure that in a given billing period, you are not overcharged." Google also stated on November 20, 2003: "When your ad accrues more clicks in a day than your daily budget allows, you are automatically given overdelivery credits for the excess amount."

INTERROGATORY NO. 6:

State the reason(s), including all supporting facts, why YOU continued to use GOOGLE's AdWords program even after YOU realized that GOOGLE was periodically charging you in excess of 100% of your Adwords daily budget on certain days.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague, ambiguous, and is neither relevant to the subject matter of this action, nor any claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this Interrogatory on the ground that it is burdensome and oppressive to require Plaintiff to state "all supporting facts."

Subject to general and specific objections, Plaintiff states that after he realized that Google periodically charged more than Plaintiff's daily budget, he believed that Google's charges were in error and that Plaintiff would ultimately obtain credits from Google. After Plaintiff realized that Google's policy was to regularly overcharge its customers and that Google was not going to refund the excess amount, Plaintiff continued to use AdWords, while seeking damages from Google, because Google was the dominant player in the online advertising market, and did not charge a minimum fee.

INTERROGATORY NO. 7:

Identify with specificity the pecuniary damage(s) YOU claim YOU suffered as a result of GOOGLE delivering clicks in excess of 100% of YOUR AdWords daily budget.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google. It is burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question.

Subject to the general and specific objections, Plaintiff states that the amount of pecuniary damages he suffered are the amounts that Google charged Plaintiff over his daily budget, together with interest. Google's records contain Plaintiff's daily budget and the amount in excess of the daily budget Google charged him.

INTERROGATORY NO. 8:

Identify with specificity any business opportunity YOU claim YOU lost as a result of GOOGLE delivering clicks in excess of 100% of YOUR daily budget, including without limitation the identity of the potential or existing customer involved and the date of the loss.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, vague, ambiguous, and is not relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding these objections and the general objections stated above, Plaintiff responds that it he is not claiming damages for lost business opportunities.

INTERROGATORY NO. 9:

For those days on which YOU claim that GOOGLE delivered clicks over 100% of YOUR daily budget, please identify each day which YOU claim YOU could not meet the demand resulting from the over-delivery of clicks, and all facts in support of your contention.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague, ambiguous, and is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this Interrogatory on the ground that it is burdensome and oppressive to require Plaintiff to identify "all facts."

Subject to the general and specific objections, Plaintiff responds that he cannot recall the exact dates when he could not meet demand resulting from overdelivery credits, but knows that it occurred at various times.

INTERROGATORY NO. 10:

Identify all efforts YOU took, including all supporting facts, to mitigate the damages YOU claim YOU suffered as a result of GOOGLE's conduct as alleged by YOU in the COMPLAINT.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, vague, ambiguous, and seeks information that is already on the record, has already been produced, or is already available to Google. It is burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question and identify "all supporting facts." Plaintiff also objects to this Interrogatory as it requires Plaintiff to make legal conclusions and apply law to facts.

Subject to the general and specific objections, Plaintiff responds that Plaintiff sought a satisfactory resolution from Google as to the overcharges. At times Plaintiff was told by Google that he would be credited for overdelivery. When Plaintiff realized that Google was not going to credit him for overdelivery, it sought legal assistance and commenced a lawsuit in August 2005 for damages and injunctive relief.

INTERROGATORY NO. 11:

Identify each case, including the case name, case number, the parties involved, and the name of the court, in connection with which YOU have ever been deposed.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome. This Interrogatory is also neither relevant to the subject matter of this action, nor any claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the general and specific objections, Plaintiff states that he has not been deposed, other than in this action.

INTERROGATORY NO. 12:

State the reason(s), including all supporting facts, why YOU have in the past paused and/or unpaused YOUR ads with GOOGLE's AdWords program.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad. This Interrogatory is also neither relevant to the subject matter of this action, nor any claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this Interrogatory on the ground that it is burdensome and oppressive to require Plaintiff to state "all supporting facts."

Subject to general and specific objections, Plaintiff states that he paused his campaigns to control his advertising costs. Plaintiff also paused his campaigns on the weekends because he did not work on the weekends, and, as his company was in the business to assist students with their homework problems, his customers did not typically require his services on the weekends. In addition, Plaintiff paused his campaigns overnight, on holidays, and when he went away on vacation.

INTERROGATORY NO. 13:

For each day on which the charges for any of YOUR ad campaigns exceeded the amount set as YOUR daily budget for the ad campaign, please describe in detail, including all supporting facts, the reason(s) why YOU did not pause YOUR campaign.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague and ambiguous. This Interrogatory is also neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this Interrogatory on the ground that it is burdensome and oppressive to require Plaintiff to describe in detail "all supporting facts."

Subject to general and specific objections, Plaintiff states that he did not pause advertising campaigns when charges exceeded the daily budget each day for a variety of reasons, including the following: Plaintiff may not have known until after the fact that he was receiving clicks that would cost more than its daily budget because he was unaware of Google's overdelivery policy; Plaintiff may not have had access to his AdWords account at the time that his daily budget was exceeded and therefore may not have known about the excess clicks; Plaintiff believed that he would not be charged for any overdelivery; and Plaintiff did not know until he received his monthly bill which clicks in excess of Plaintiff's daily budget would result in actual charges to his account.

INTERROGATORY NO. 14:

Identify any training concerning AdWords, including without limitation any tutorials, YOU received from any PERSON, including the date of the training and the identity of the PERSON providing the training.

RESPONSE:

Subject to general and specific objections, Plaintiff states that he has not received any training from anyone in terms of learning how to use the AdWords program. He did look at the AdWords tutorials, although he did not spend a lot of time with the tutorials because they related to sophisticated issues such as multiple campaigns, and advertising in different languages.

INTERROGATORY NO. 15:

If YOU contend that YOU have standing to sue GOOGLE under California Business & Professions Code section 17200, et seq. and/or 17500, et seq., please state all facts supporting YOUR contention.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information that is already on the record or has already been produced. It is burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question and state "all facts." Plaintiff also objects to this Interrogatory as it requires Plaintiff to make legal conclusions.

INTERROGATORY NO. 16:

Please describe in detail the role and duties of each PERSON who was involved with any of YOUR AdWords advertisements.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is vague and ambiguous. Subject to the general and specific objections, Plaintiff states that only he was involved with AdWords advertisements.

INTERROGATORY NO. 17:

Identify each and every portion of YOUR CONTRACT with GOOGLE that YOU contend is void or voidable, and all facts supporting YOUR contention.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, vague, ambiguous, and seeks information that is already on the record, has already been produced, or is already available to Google. It is burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question and to identify "all facts." Plaintiff also objects to this Interrogatory as it requires Plaintiff to make legal conclusions and apply law to facts.

Subject to general and specific objections, Plaintiff states that the portions of the Contract relied upon by defendant as providing authority to charge Plaintiff more than his daily budget on any given day is voidable and otherwise unenforceable given Google's material misrepresentations that advertisers may pause their ad without being charged for those days, and that advertisers would not be billed more than their daily budget for those days that their ad runs. The material misrepresentations were, and are, contrary to Google's billing practices.

INTERROGATORY NO. 18:

For each AdWords ad campaign which YOU created, edited, or managed on behalf of any PERSONS other than Howard Stern, identify the ad campaign, the related account name, the account number under which the campaign was created, the identity of the PERSON on whose behalf it was created, and the PERSON who paid for the campaign.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague, ambiguous, and not reasonably calculated to lead to admissible evidence. It is unduly burdensome, seeks information that is already on the record, has already been produced, or is already available to Google.

Subject to the general and specific objections, Plaintiff states that he did not create, edit, or manage any AdWords ad campaigns on behalf of any person other than himself.

INTERROGATORY NO. 19:

If YOUR response to request for admission number 9 served with these interrogatories is anything other than an unqualified admission, state all facts upon which YOU based YOUR response.

RESPONSE:

In addition to the general objections, Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague, ambiguous, and is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects that the Interrogatory is unduly burdensome as it requires Plaintiff to state "all facts." Plaintiff also objects to this Interrogatory as it requires Plaintiff to make legal conclusions and apply law to facts.

Subject to and without waiver of any objection, Plaintiff denied request for admission number 9 because it called for a legal conclusion and because the definition of "reseller" is overbroad, vague, and ambiguous.

INTERROGATORY NO. 20:

If YOUR response to request for admission number 10 served with these interrogatories is anything other than unqualified admission, state all facts upon which YOU based YOUR response.

RESPONSE:

Plaintiff objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome as it requires Plaintiff to state "all facts." Plaintiff also objects to this Interrogatory as it requires Plaintiff to make legal conclusions and apply law to facts.

Subject to the specific and general objections, Plaintiff denied request for admission number 10 because it called for a legal conclusion and because the definition of "reseller" is overbroad, vague, and ambiguous.

INTERROGATORY NO. 21:

If YOUR response to request for admission number 11 served with these interrogatories is anything other than an unqualified admission, state all facts upon which YOU based YOUR response.

RESPONSE:

Plaintiff objects to this Interrogatory as overbroad, unduly burdensome, vague, ambiguous, irrelevant and not reasonably calculated to lead to discovery of admissible evidence. Plaintiff further objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome as it requires Plaintiff to state "all facts.

Subject to the specific and general objections, Plaintiff, to the best of his understanding of request for admission number 11, admitted that request.

Dated: September 26, 2008

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By [signature]
Rachel S. Black
Attorneys for Plaintiffs

VERIFICATION

STATE OF New York)
COUNTY OF New York) ss.:
)

HOWARD STERN, being duly sworn, deposes and says:

I am a plaintiff in this action and I have read the foregoing Howard Stern's Responses and Objections to Defendant Google Inc.'s Interrogatories (Set One) ("Response") and know its contents. The Response is true to the best of my knowledge, information, and belief.

HOWARD STERN

Sworn to and subscribed before me this
26 day of September, 2008

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 950, Los Angeles, California 90067-6029.

On September 29, 2008, I served the foregoing document(s) described as follows:

HOWARD STERN'S RESPONSES AND OBJECTIONS TO DEFENDANT GOOGLE INC.'S INTERROGATORIES (SET ONE)

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

_XX_ BY MAIL:
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

_____ BY PERSONAL SERVICE:
I caused to be delivered such envelope by hand to the offices of the addressee.

_____ BY FEDERAL EXPRESS OR OVERNIGHT COURIER

_____ BY TELECOPIER
I served by facsimile as indicated on the attached service list.

_XX_ BY ELECTRONIC MAIL
I caused said documents to be prepared in portable document format (PDF) for e-mailing and served by electronic mail as indicated on the attached service list.

Executed on September 29, 2008, at Los Angeles, California.

_____ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_XX_ (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Sandra L. Thomas — Sandra L. Thomas
(Type or Print Name) — (Signature)

SERVICE LIST

CLRB Hanson Industries, LLC v. Google Inc.
U.S. District Court, Northern District of California, San Jose Division
Case No. C 05-03649 JW

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